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Follow-up to the recommendations of the Permanent Forum: (a) Economic and social development; (b) Indigenous women; (c) Second International Decade of the World's Indigenous People

Human rights: (a) Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Half-day discussion on the Arctic

Information received from Governments

Denmark and Greenland

Summary

The present report contains an abbreviated version of the executive summary of the Greenland-Danish Self-Government Commission report on self-government in Greenland and information on the referendum held in Greenland on 25 November 2008 concerning the Act and on the process leading up to the entry into force of the Act. The draft Act on Greenland Self-Government is set out in the annex to the report.

The report responds to the request of the Secretary-General to provide information on implementation of the recommendations of the Permanent Forum on Indigenous Issues, in particular the United Nations Declaration on the Rights of Indigenous Peoples and the overall recommendation of the Permanent Forum to promote and implement the Declaration.

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I. Abbreviated version of the executive summary of the Greenland-Danish Self-Government Commission report on self-government in Greenland

Background to the establishment of the Greenland-Danish Self-Government Commission

Historical background, including the Greenland Home Rule Arrangement

1. Before the introduction of home rule in 1979, the Greenland population was only involved in the Government of the country to a limited extent.

2. From the colonization of Greenland in 1721 and up to about the middle of the nineteenth century, Greenland was administered by the Danish Government. In the middle of the nineteenth century, elected assemblies were established: so-called managers were elected to administer local matters. In 1911, local councils were set up and two provincial councils. The primary tasks of the local councils were the administration of social assistance and the maintenance of law and order. The provincial councils were responsible for discussing joint concerns for the individual provincial council district and were entitled to present proposals to the authorities in Denmark. In 1925, the local and provincial councils were supplemented with district councils that were to provide assistance to business and the labour market in Greenland in the form of loans, subsidies and the like.

3. In 1951, the above-mentioned councils were replaced by municipal councils and one joint provincial council covering all Greenland, respectively. The primary task of the common provincial council was to act as an adviser in relation to the Danish Government. The council had only very limited, direct responsibility for societal tasks in Greenland.

4. In the period from 1945 to 1954, Greenland figured on the list of Non-Self-Governing Territories under Chapter XI of the Charter of the United Nations, and during this period Denmark had to submit reports on the situation at regular intervals to the relevant decolonization bodies of the United Nations. The reporting ceased in 1954 when the General Assembly of the United Nations took note of Greenland's integration into the Kingdom of Denmark.

5. In the first half of the 1970s, a number of tasks were transferred from the Government to the Greenland municipalities. Greenland became a member of the European Economic Commission (today the European Union) together with Denmark in 1973. Greenland membership in the European Economic Commission ceased in 1985, at which time Greenland obtained an Overseas Countries and Territories Agreement arrangement.

6. In 1973, an internal Greenland Home Rule Committee was set up for the purpose of considering the possibility of establishing a Home Rule Arrangement within the framework of the unity of the Realm. The Committee presented a proposal for negotiation in 1975, which led to the establishment of a Home Rule Commission the same year. Approximately three years later, the Commission's work resulted in the adoption of the Greenland Home Rule Arrangement, first by the Folketing (Danish Parliament) and subsequently by the Greenland population. The Greenland Home Rule Arrangement came into force on 1 May 1979.

7. With the establishment of the Home Rule Arrangement, it became possible for Greenland to assume legislative and executive power regarding Home Rule matters. Over a number of years, a series of important fields of responsibility were assumed by the Home Rule Government, including Greenland's internal administration, direct and indirect taxes, the established church, fishing in the territory, hunting, agriculture and reindeer breeding, social welfare, labour market affairs, education and cultural affairs, vocational education, other matters relating to trade, health services, the housing area and protection of the environment.

Greenland Home Rule Commission

8. After 20 years of home rule, practically all fields of responsibility that could be transferred under the Home Rule Act had been taken over by the Home Rule Government. Recognizing that there was a need for revising Greenland's position within the unity of the Realm, the Landsstyre (Greenland Government) set up the Greenland Home Rule Commission at the turn of the year 1999-2000.

9. The Commission presented its report in 2003. After recommendation by the Landsstyre, the Landsting (Greenland Parliament) endorsed the Commission's recommendations and proposal to set up a joint Greenland-Danish commission.

Greenland-Danish Self-Government Commission and its work

10. On 21 June 2004, the Danish Prime Minister and the Greenland Premier (Landsstyreformand) signed the terms of reference for the Greenland-Danish Self-Government Commission. Immediately thereafter, the Commission was established. The Commission, which has now completed its work, has comprised a chairman, a deputy chairman and seven members appointed by the Government after recommendation by the Folketing and seven members appointed by the Landsstyre after recommendation by the parties or groupings of the Landsting.

11. The Commission has, furthermore, obtained legal advice and expert assistance from appointed delegates and external experts on specific subjects.

12. The Commission commenced its work in September 2004. The Commission has set up three working groups, which have considered such specific subjects as mineral resources in the subsoil, economic and industrial development, as well as issues of national and international law. On 17 April 2008, the Commission held its 12th and last meeting.

13. The work of the Commission rests on the terms of reference drawn up jointly by the Government and the Landsstyre. In accordance with the terms of reference:

> The Commission shall, on the basis of Greenland's present constitutional position and in accordance with the right of self-determination of the people of Greenland under international law, deliberate and make proposals for how the Greenland authorities can assume further powers, where this is constitutionally possible. The Commission shall draw up proposals for a new arrangement which also takes into consideration the fields of responsibility that have already been assumed by the Greenland authorities under the Greenland Home Rule Act.
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> ...

> The Commission shall base its work on the principle that there must be accordance between rights and obligations. The Commission shall deliberate and make proposals for a new arrangement concerning the economic situation between Greenland and Denmark.
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> ...
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> The Danish Government and the Greenland Landsstyre are in agreement that it is for the people of Greenland to decide whether Greenland wishes independence, and that the new arrangement shall imply no change to that. Where relevant, independence will have to be implemented through the conclusion of an agreement to this effect under the rules laid down in section 19 of the Danish Constitution. The Commission's proposals for a new arrangement shall contain a provision on Greenland's access to independence in accordance with this.

14. The Commission submitted its report to the Government and the Landsstyre on 6 May 2008. The entire Commission, apart from one member, has endorsed the report.

Overall preconditions and clarification of the framework for the work of the Commission

15. The main task of the Commission has been to submit draft legislation regarding a self-government arrangement for Greenland. A significant element of the arrangement is that it will be possible for the self-government authorities to assume responsibility for more fields than those already taken over under the Home Rule Arrangement. The Commission, however, has not had an altogether free hand in drafting the proposal as the Landsstyre and the Government, in the terms of reference for the work, have laid down a certain framework which the Commission has been obliged to comply with.

16. Consequently, the new arrangement is to be placed "within the framework of the existing unity of the Realm" and take its "point of departure in Greenland's present constitutional position", namely the existing Danish Constitution.

17. This framework for the assumption of fields of responsibility has been altogether crucial to the Commission's deliberations, but there has not been complete agreement among the Commission's members on the scope and interpretation of the framework. The Commission's deliberations have led to a decision to consider the Government's view of national law, as interpreted by the Ministry of Justice, as the basis for the Commission's draft Act on Greenland Self-Government (see annex). The Commission notes in that connection that this decision cannot be seen as an indication that all the members of the Commission are in agreement with the Government's view regarding this point.

18. Against this background, the self-government authorities may take over all fields of responsibility that have not already been assumed by the Home Rule Government, with the exemption of the following: the Constitution, foreign affairs, defence and security policy, the Supreme Court, nationality, and exchange rate and monetary policy.

19. Another significant element of the arrangement is that the Commission proposal must rest on the principle of accordance between rights and obligations. It is the opinion of the Commission that this implies that increased self-government for Greenland must be linked to increased economic responsibility. Consequently, Greenland must to a greater extent than today be able to generate the necessary revenue in order to finance increased self-government and, thus, in this way become less dependent on the subsidy from the Government.

20. Furthermore, the self-government arrangement is to be "in accordance with the right of self-determination of the people of Greenland under international law". The effect of this has been a number of discussions of the framework for the work that can be deduced from international law.

21. The members of the Commission are in agreement that the people of Greenland can be characterized as a people within the meaning of international law. In this connection, the Commission has discussed among other things what can be deduced from the concept of a people's right to self-determination, for example, in relation to the possibility of demanding independence. The discussions have not resulted in any final clarification of the scope of the right to self-determination, but, irrespective of the specific scope of the right of the people of Greenland to self-determination, the Commission notes that there is agreement between the Landsstyre and the Government that the decision must lie with the people of Greenland as to whether Greenland wishes independence. This is reflected in the Commission's draft Act on Greenland Self-Government.

Self-government authorities

22. According to the Home Rule Act, the elected assembly, the Landsting, has the legislative power, whereas the executive body, the Landsstyre, is elected by the Landsting (on the basis of an absolute majority). Detailed regulation of the relations between the legislative and the executive authorities is the responsibility of the Home Rule Government itself.

23. The Self-Government Commission is in agreement with the principle that detailed regulation of the relations between the Landsting and the Landsstyre is the responsibility of the self-government authorities. Therefore, the Commission has not considered the issue in detail. However, the Commission wishes to propose that in connection with the provisions of the Act on Greenland Self-Government regarding the two authorities, the Greenland designations should be used for Landsting and Landsstyre, namely Inatsisartut and Naalakkersuisut.

24. The principle of the tripartite division of power under self-government, including maximum competence to the self-government authorities, may be realized provided the self-government authorities, in addition to the legislative and administrative power in fields of responsibility that have been taken over, also assume the regulation of the administration of justice in Greenland, including the establishment of independent courts of law. Therefore, the Commission has proposed that the prison and probation service, the police and the prosecution service, criminal law and the administration of justice, including the establishment of independent courts of law in Greenland, could be transferred to the self-government authorities under the Act on Greenland Self-Government.

25. The Supreme Court will, however, remain the highest judicial authority of the Realm, also after the transfer of the administration of justice to the self-government authorities.

26. Greenland self-government authorities will, accordingly, have the legislative and executive power within the fields of responsibility taken over, whereas the judicial power will lie with the courts of law, including with courts to be set up by the self-government authorities.

Assumption of fields of responsibility by the self-government authorities

27. Since the introduction of the Home Rule Arrangement in 1979, the Greenland Home Rule Government has assumed responsibility for practically all the fields that are indicated in the Home Rule Act. With the self-government arrangement, the stage is set for assuming additional fields of responsibility, and the Self-Government Commission has discussed the model for taking over such additional fields.

28. The Commission proposal is a combination of a "positive list" and an "agreement model". Thus, a Schedule to the Act on Greenland Self-Government (the positive list) presents a number of fields of responsibility that may be assumed by the self-government authorities. Among those that may be taken over are, for example, the mineral resource area; the police and the prosecution service; the administration of justice, including the establishment of courts of law; the prison and probation service; law of legal capacity, family law and succession law; aliens and border controls; the field relating to company law, accounting and auditing; and financial regulation and supervision. In addition, the Landsstyre and the Government may agree that other fields not listed in the Schedule to the Act (for example, new fields of responsibility that are not known today) may be assumed if they exclusively concern Greenland affairs (the agreement model).

29. The fields of responsibility that may be assumed are presented in two lists (see annex, list I and list II). The authority to decide on the point of time for Greenland to assume a field of responsibility from either list lies with the self-government authorities. It is, however, a precondition that before the self-government authorities fix the point of time for taking over the fields presented in list II, negotiation must take place between the Landsstyre and the Government, as the fields presented in list II are expected, to a greater extent, to require joint preparations prior to assumption by the self-government authorities.

30. The assumption of a field of jurisdiction implies that the self-government authorities would take over the legislative and executive power regarding the area. Thus, it is the self-government authorities that have the competence to issue rules regarding the field, and the self-government authorities have at the same time the responsibility for ongoing administration under the rules. With the assumption of a field of responsibility, the self-government authorities would also take over the financing of the expenditure related to attendance to the field.

31. After the assumption of a field of jurisdiction by the self-government authorities, it may be expedient to continue cooperation between Greenland and Danish authorities and institutions in the field, at least for a transitional period of

time. Cooperation of this kind will be subject to further agreement between the Greenland and Danish authorities in connection with the takeover of the field.

32. However, in one particular area, the Commission has found grounds for recommending a specific cooperation model. The assumption of the mineral resource area should, according to the Commission, take place in the same manner as recommended for the other fields of responsibility. However, the Commission is, at the same time, of the opinion that the mineral resource area is of such a nature that more specific cooperation should be established in connection with the takeover.

33. The proposal therefore recommends continued professional cooperation between the Greenland mineral resource authorities and the Geological Survey of Denmark and Greenland and the National Environmental Research Institute, which is now part of Aarhus University. Cooperation after Greenland has taken over the field relating to mineral resources should be established as a five-year cooperation agreement from the date of the assumption of the field. Following the expiry of the first agreement, the cooperation may continue in the form of multi-year agreements, provided the self-government authorities so wish.

Economy and industrial development

34. The Commission is of the opinion that the self-government arrangement should, to the maximum extent, rest on a self-sustainable economy. The Commission proposal will therefore support consideration of the view that Greenland society should become more economically self-sustainable and thus less dependent on Government subsidies. The Commission is also of the opinion that increased Greenland self-government involves increased economic responsibility.

35. However, with the earnings differential that exists today between Greenland and Denmark, the Commission has also found it important that future economic relations should not per se contribute to increasing the difference in material standards of living between Greenland and Denmark.

36. In the overall economic model proposed, the Commission has endeavoured to pay attention to these matters. The model includes the following main elements:

(a) The Government subsidy to remain unchanged, at the 2007 level, namely, DKK 3,202.1 million a year, adjusted for price and wage development;

(b) Greenland itself to finance fields of responsibility that are taken over in the future;

(c) Revenue from mineral resource activities in Greenland to accrue to the Greenland self-government authorities;

(d) The Government subsidy to be reduced by an amount corresponding to half the revenue from mineral resource activities exceeding an annual DKK 75 million;

(e) The Government and the self-government authorities to cooperate in the first five-year period on tasks relating to mineral resources. Subsequently, it will be for the Self-Government authorities to decide whether to renew the agreement;

(f) Negotiations to be initiated between the self-government authorities and the Government when the Government subsidy to Greenland has been reduced to zero kroner. The negotiations will include the issue of the distribution of revenue from mineral resource activities in the Greenland subsoil and the issue of a resumption of the Government subsidy to the self-government authorities.

37. The main idea of the model is that revenue from mineral resource activities in Greenland should accrue to the self-government authorities, but that such revenue should at the same time imply that the Government subsidy to Greenland be reduced by half the revenue in excess of DKK 75 million, and that Greenland itself finance fields of responsibility that are taken over in the future.

38. Provided the growth rate of the Greenland economy continues, an unchanged Government subsidy in real terms to Greenland will mean that revenue from the Government will continue over time to constitute a declining proportion of total national income. Greenland will, consequently, become less dependent on Government transfers in relation to the total economy of Greenland and thus more economically self-sustainable.

39. With the Act on Greenland Self-Government, the self-government authorities can take over more than another 30 fields of responsibility. When responsibility is assumed for a field, it will subsequently be financed by the self-government authorities. Consequently, the correlation between rights and obligations will be taken into account, which means that increased Greenland self-government involves increased Greenland economic responsibility. At the same time, the arrangement guarantees the self-government authorities a stable foundation for economic planning since it is the self-government authorities themselves that decide which fields of responsibility are to be taken over and when.

40. The model supports increased self-sustainability in Greenland society, with Greenland itself receiving the first DKK 75 million from mineral resource activities in Greenland.

41. When the Government subsidy to the self-government authorities has been reduced to zero kroner, negotiations are to be initiated between the self-government authorities and the Government on economic relations in the future. The negotiations will include, among other things, the issue of the distribution of revenue from the mineral resource activities in Greenland and the issue of a resumption of the Government subsidy to the self-government authorities. The discussions may also include the issue of expenditure to cover fields of responsibility that cannot be assumed within the framework of the Danish Constitutional Act and the unity of the Realm, and any other issues to which the self-government authorities and the Government wish to find joint solutions. Neither party is, however, committed to a specific negotiation result. If the parties do not conclude any agreement on the distribution of the revenue from mineral resource activities in Greenland, the revenue will accrue to the self-government authorities, apart from the Danish public authorities revenue, including from direct and indirect taxes and stakes in companies that are involved in mineral resource activity in Greenland. If the parties do not conclude any agreement on a resumption of the Government subsidy to the self-government authorities, the Government will not provide any subsidy to the self-government authorities in the following years.

42. The Commission is furthermore of the opinion that, with the reforms of the past few years, initiatives have been launched in a number of important structural policy and industrial and educational policy areas that aim at making Greenland society more economically self-sustainable. In a few of the areas, the Commission has proposed that initiatives should be launched with a view to following up such initiatives. This applies, among other things, to competition legislation and in connection with Home Rule Government ownership of industrial enterprises.

Foreign affairs

43. Participation of the Home Rule Government in foreign policy matters today is based on the Greenland Home Rule Act and the Authorization Act as well as on agreements concluded between the Landsstyre and the Government, for example, the Itilleq Declaration and the practice that has evolved.

44. The Commission has accepted, with the Government's assessment of the constitutional framework, that there is only limited scope for statutory provisions, which grant the self-government authorities increased foreign policy powers. Not all members of the Commission are in agreement with the Government's assessment.

45. It has been an important point for the Commission that the Act on Greenland Self-Government should contain a proposal for an overall arrangement regarding Greenland's participation in foreign policy matters in the most significant areas. The foreign affairs provisions are therefore set out in a chapter of the proposal that contains two key elements: an arrangement on authorization for the self-government authorities to negotiate and conclude agreements under international law and an arrangement on the involvement of the Landsstyre in foreign policy matters under the central authorities of the Realm.

46. The Commission proposal regarding the authorization arrangement contains a number of linguistic changes, when compared with the Authorization Act, without changing the arrangement as such. The main content of the arrangement remains that the Landsstyre, on behalf of the Realm, can negotiate and conclude agreements under international law that exclusively concern Greenland and entirely relate to fields of responsibility that have been taken over by Greenland authorities. In relation to the Authorization Act, the proposal adds that the alternative designations, which the Landsstyre may otherwise use when concluding agreements, depending on the nature of the specific agreement, are now established by the Act. In addition, the proposal contains the same procedure regarding the handling, including briefings on negotiations, which the Landsstyre proposes to initiate under the authorization arrangement. Finally, the proposal contains the provision according to which the Government may submit or support an application from the Landstyre for membership of international organizations that allow entities other than States and associations of States to attain membership, provided that this is consistent with the constitutional status of Greenland.

47. The Commission proposal for an arrangement on the involvement of the Landsstyre in areas where the Government negotiates and concludes agreements under international law rests, among other things, on the basic principles of the Itilleq Declaration on the involvement of Greenland in foreign and security policy. The proposal implies, among other things, that, in respect of agreements where the Government and the Landsstyre have been jointly involved in the negotiations, the

agreement must be signed by the Government, to the widest extent possible together with the Landsstyre. Furthermore, the proposal contains a new element: that the Government must inform the Landsstyre, prior to commencing negotiations, on agreements under international law which are of particular importance to Greenland. Finally, the proposal implies an extended consultation obligation regarding agreements under international law which are of particular importance to Greenland. These agreements must, consequently, be submitted to the Landsstyre before being concluded or terminated. A new element is that an agreement must, to the widest extent possible, be concluded without any effect for Greenland if the Landsstyre so wishes or if the Landsstyre has not submitted any comments. An important element of the proposal is that it sets the stage for enabling the Landsstyre and the ministers in charge of the individual areas to conclude agreements on cooperation regarding the area.

48. Furthermore, the proposal opens up the possibility of concluding an agreement between the Ministry of Foreign Affairs of Denmark and the Landsstyre to the effect that a representative of the Landsstyre appointed to the diplomatic missions of Denmark — in addition to attending to matters relating to fields of responsibility that have been entirely taken over by the Greenland authorities — may also attend to other matters.

Cooperation between the Greenland self-government authorities and the central authorities of the Realm regarding areas under Danish jurisdiction

Submission of Danish legislation to the self-government authorities

49. In its draft Act on Greenland Self-Government, the Self-Government Commission has drawn up a set of rules for ways in which the submission of Danish legislation to the self-government authorities can be organized in the areas that still remain under the central authorities of the Realm.

50. The Commission has discussed consideration of various contradictory views. The Commission wishes, on the one hand, that the self-government authorities have an opportunity to exert increased influence on the legislation that may apply to Greenland in the future. On the other hand, there is consideration to be given to the work of the Folketing and the Danish legislative process that must not, at the same time, be blocked. The Commission proposal reflects a wish to strike a balance between the various views.

51. According to the Commission proposal, Government bills that comprise or may be brought into force in Greenland must be submitted to the self-government authorities for comments before they are presented to the Folketing. The Government must await the comments of the self-government authorities before the Government bills are presented; the comments include provisions that exclusively apply to Greenland or are of particular importance to Greenland. The arrangement also includes the possibility of fixing a time limit for comments to be made by the self-government authorities.

52. The Commission proposes a similar arrangement for administrative orders.

53. In connection with Government bills that do not include provisions exclusively applying to Greenland or of particular importance to Greenland, the idea, as a predominant rule, is that they are not immediately to extend to Greenland, but may subsequently be brought into force by royal decree. In these cases, the Government may submit the bill to Parliament, including in cases where no comments have been made by the self-government authorities. The Danish legislative process may, consequently, be completed, and Greenland will at the same time have the opportunity of becoming included in the common legislation, thus resulting in a swifter updating of the rules. On the other hand, the self-government authorities are not bound by this updating as it is for the Greenland authorities themselves to decide whether they wish the specific statute to be brought into force by royal decree.

Questions between the self-government authorities and the central authorities of the Realm concerning their respective jurisdictions

54. The Commission has also found that it may prove expedient in the future to have rules allowing for a situation where no negotiated solution can be found in connection with a potential disagreement between the self-government authorities and the central authorities of the Realm concerning their respective jurisdictions. Compared with the corresponding provision in the Home Rule Act, the Commission proposal for a provision regarding dispute resolution specifies that questions of doubt must be submitted to a dispute resolution board, provided either the Government or the Landsstyre so decides. Furthermore, it will no longer be the Government, but the board itself, that can decide to suspend an enactment or decision until the board has ruled.

High Commissioner of Greenland

55. The Commission has not found grounds for proposing any changes to the role of the High Commissioner in relation to the Home Rule Arrangement. The Commission is, however, of the opinion that the High Commissioner can fulfil his duties without the powers being set out in detail in the Act on Greenland Self-Government. Therefore, the Commission proposes that the Act on Greenland Self-Government should not contain any rules regarding the High Commissioner of Greenland.

56. The cooperation between the Greenland self-government authorities and the central authorities of the Realm regarding areas under Danish jurisdiction is set out in the report of the Greenland-Danish Self-Government Commission.

Language

57. It appears from section 9 of the Greenland Home Rule Act that Greenlandic is the principal language in Greenland, that Danish must be thoroughly taught and that either language may be used for official purposes.

58. During the second half of the twentieth century, a significant change took place in the language policy in Greenland. Up to the end of the 1970s, the Danish language had a very high priority. Subsequently, the teaching of Danish was downgraded as a result of substantial intensification of the Greenlandic language.

59. The Greenland-Danish Self-Government Commission has discussed the issue of language and its significance. The Commission has taken note of the Greenland Self-Government Commission recommendations regarding the language issue. The Greenland Self-Government Commission stated that Greenlandic is a key part of the cultural identity of the people of Greenland, and that the language therefore should not merely be the country's principal language, but the official language. The Commission has also taken note that the Greenland Self-Government Commission stated that insufficient knowledge of Danish or other foreign languages will prolong the existing educational backlog in Greenland, unless the language policy is determined with attention paid to this aspect.

60. The Commission has discussed the language and its application, including the need for citizens everywhere in the Realm to be able to use the Danish language in connection with official matters, as well as the question as to whether the language and its application can be transferred to the Greenland authorities.

61. The Commission has found that there are no constitutional restrictions on leaving the Danish language and its application to the self-government authorities. Leaving the Danish language to the self-government authorities can be agreed on certain terms, for example that the language is to be regulated and administered independently within the framework of some given principles.

62. The Commission has found that the existing Landsting legislation on public administration establishes that both Greenlandic and Danish may be used with respect to public matters; that the Nordic Language Convention entitles Nordic nationals to use their own language, including Greenlandic, in another Nordic country, including in Greenland; and that instruction in both Greenlandic and Danish arises out of other relevant legislation, for example primary and lower secondary school legislation, as well as legislation relating to other general education and vocational education and training programmes.

63. In consideration of the above-mentioned regulation, the Commission has found that a provision on language in a future Act on Greenland Self-Government should exclusively relate to matters of principle. On the basis of this view, the Commission proposes that the draft Act on Greenland Self-Government include a provision establishing that Greenlandic be the official language of Greenland.

Greenland's access to independence

64. The main task of the Commission is to present proposals for ways in which the Greenland authorities can take over further competence within the unity of the Realm. In addition, the Commission has been assigned the task of describing in the Act on Greenland Self-Government how Greenland can become an independent State. Even if the Commission's work has had to be based on the present constitutional position of Greenland, the Commission proposal will not rule out the possibility of Greenland becoming independent.

65. The point of departure regarding Greenland independence is for independence to be the wish of the people of Greenland.

66. The content of the Commission's draft Act on Greenland Self-Government directs the Government to commence negotiations with a view to concluding an

agreement between the Landsstyre and the Government. The decision to commence the negotiations on independence is to be taken by the people of Greenland.

67. The conclusion of an agreement between the Landsstyre and the Government on independence requires the consent of both the Landsting and the Folketing. With respect to the Folketing, this follows from the Danish Constitution, according to which the Government cannot, without the consent of the Folketing, "undertake any act whereby the territory of the Realm shall be increased or reduced".[1] It is assumed, before an agreement is submitted to the Folketing, that the agreement has been presented to the people of Greenland and approved by a referendum in Greenland. Questions relating to the implementation of such a referendum must, in the opinion of the Commission, be decided by the Greenland self-government authorities. The Commission assumes that the point of departure will be the principles governing existing franchise rules for election to the Landsting. The Commission considers it of great importance that the result of a referendum should reflect a clear wish for independence, so that no doubt about the result will arise internationally.

68. In connection with the introduction of independence, Greenland will be established as a new State, and sovereignty over the Greenland territory will be transferred from the central authorities of the Realm to the authorities of the new State. Greenland's deliberations on independence may, among other things, include deliberations regarding an arrangement in the form of free association with Denmark.

69. The proposal for a preamble to the Act on Greenland Self-Government should be seen in connection with the Commission's proposal for the provision in the Self-Government Act on Greenland's access to independence.

70. The Commission has taken note that the Landsstyre and the Government are in agreement that it is for the people of Greenland to decide whether Greenland wishes independence and the fact that the Prime Minister on several occasions has underlined the Government position, according to which it is for the people of Greenland to decide on the future of Greenland and the relations with Denmark.

71. The Commission's draft Act on Greenland Self-Government reflects those indications.

Personnel-related matters in connection with the assumption of fields of responsibility by the self-government authorities

72. The question of employment for the personnel of the authorities who so far have attended to the tasks in a field that will be transferred from the Government to the Greenland authorities has been pertinent since the Greenland municipalities in the mid-1970s took over tasks from the State sector. With the introduction of the Home Rule Government, the question has become increasingly important.

73. In the forthcoming Act on Greenland Self-Government, the legislative and executive power may in a number of fields of responsibility be taken over by the Greenland authorities. These fields are currently attended to by the personnel of the Danish authorities, for example the legal system and the police. The question of

[1] Consitutional Act of Denmark, sect. 19, 5 June 1953.

employment for the personnel who have attended to the tasks so far, including whether the personnel concerned are to be transferred to employment under the Greenland authorities, must therefore be clarified.

74. Under the current civil servants legislation for Greenland, civil servants employed as of 1 January 1976 or later are under an obligation to transfer to employment under the Greenland authorities. It may, however, be determined that employees in certain positions, for example within the police and the legal system, are not to be under an obligation to continue their service under the Greenland authorities. The Commission proposes that the civil servants legislation should be amended to make it possible for Greenland authorities to conclude agreements regarding pay and other employment conditions for the civil servants who wish to maintain their employment with the Danish authority concerned, but who are seconded to the Greenland authorities.

75. Civil servants employed before 1 January 1976 must be offered employment as civil servants under the Greenland authorities. If the civil servant does not wish to accept the offer, the civil servant will keep his employment within the State sector, but will be obliged to accept secondment to the Greenland authorities.

76. The Commission recommends, with a few amendments, that the regulatory basis as laid down in the above legislation regarding personnel employed on civil servant conditions should also apply in connection with the assumption of fields of responsibility under a new Act on Greenland Self-Government.

77. Concerning personnel who are not employed as civil servants, the Commission proposes that the self-government authorities take over the personnel who serve within the individual field that is taken over by the self-government authorities. The Commission presupposes, in this connection, that the self-government authorities will ensure that the rights and obligations that arise out of the Transfer of Undertakings (Protection of Employment) Act will also apply to these members of personnel.

78. Such legislation will, among other things, imply that the Greenland authorities assume the rights and obligations vis-à-vis the employees that existed on the date of the transfer in accordance with collective agreements, with provisions regarding pay and working conditions determined or approved by public authorities and with individual agreements regarding pay and working conditions.

79. The Commission proposal for provisions regarding personnel who are not employed as civil servants implies, among other things, that dismissal as a result of the transfer is not considered to be reasonably justified by the situation of the authority, unless the dismissal is caused by financial, technical or organizational matters resulting in employment-related changes.

80. Finally, it is proposed that personnel who are not employed as civil servants in specified positions may also be exempted from the obligation to continue their service under the Greenland authorities.

II. Greenland referendum on self-government

81. The Landsting (Greenland Parliament) approved the Act on Greenland Self-Government in November 2008 on the basis of a non-binding referendum held in

Greenland on 25 November 2008, where 75.5 per cent of Greenland's people voted in favour of the new self-government arrangement for Greenland and 23.6 per cent voted against it.

III. Remaining process before entry into force of Act on Greenland Self-Government

82. The Government submitted the Act on Greenland Self-Government to the Folketing on 5 February 2009. The Act is expected to come into force on 21 June 2009, the national day of Greenland, by which the present Home Rule Act will be revoked.

Annex

Draft Act on Greenland Self-Government

Recognising that the people of Greenland is a people pursuant to international law with the right of self-determination, the Act is based on a wish to foster equality and mutual respect in the partnership between Denmark and Greenland. Accordingly, the Act is based on an agreement between Naalakkersuisut [Greenland Government] and the Danish Government as equal partners.

CHAPTER 1

THE SELF-GOVERNMENT AUTHORITIES AND THE COURTS

1. The Greenland Self-Government authorities shall exercise legislative and executive power in the fields of responsibility taken over. Courts of law that are established by the Self-Government authorities shall exercise judicial power in Greenland in all fields of responsibility. Accordingly, the legislative power shall lie with Inatsisartut [Greenland Parliament], the executive power with Naalakkersuisut, and the judicial power with the courts of law.

CHAPTER 2

THE SELF-GOVERNMENT AUTHORITIES' ASSUMPTION OF FIELDS OF RESPONSIBILITY

2. (1) The Greenland Self-Government authorities may determine that the fields of responsibility that appear from the Schedule to this Act shall be transferred to the Self-Government authorities.

(2) To the extent that several fields of responsibility are listed under the same paragraph or number in the Schedule to this Act, the fields of responsibility concerned shall be transferred to the Greenland Self-Government authorities at the same time, but see subsection (3).

(3) The Greenland Self-Government authorities may determine that part of the fields of responsibility that are listed in List I, para b and List II, Nos. 15, 25 and 27 in the Schedule to this Act shall be transferred to the Self-Government authorities.

3. (1) Fields of responsibility that appear from List I of the Schedule shall be transferred to the Greenland Self-Government authorities at points of time fixed by the Self-Government authorities.

(2) Fields of responsibility that appear from List II of the Schedule shall be transferred to the Greenland Self-Government authorities at points of time fixed by the Self-Government authorities after negotiation with the central authorities of the Realm.

4. Naalakkersuisut and the Government may agree that fields of responsibility which exclusively concern Greenland affairs, and which are not referred to in the Schedule, may be assumed by the Greenland Self-Government authorities.

CHAPTER 3

ECONOMIC RELATIONS BETWEEN THE GREENLAND SELF-GOVERNMENT AUTHORITIES AND THE DANISH GOVERNMENT

5. (1) The Government shall grant the Greenland Self-Government authorities an annual subsidy of DKK 3,439.6 million, but see section 8 (1). The amount is indicated in 2009 price and wage levels.

(2) The subsidy shall be adjusted annually in accordance with the increase in the general price and wage index of the Finance and Appropriation Act for the year concerned.

(3) The subsidy shall be paid in advance in the form of a monthly payment of 1/12.

(4) Subject to agreement with Naalakkersuisut, the Minister for Finance may lay down rules on changed dates for disbursement.

6. (1) Fields of responsibility that are assumed by the Greenland Self-Government authorities pursuant to sections 2-4 shall be financed by the Self-Government authorities from the date of assumption.

(2) The Greenland Self-Government authorities shall assume the real assets that are directly related to a field of responsibility that is taken over.

7. (1) Revenue from mineral resource activities in Greenland shall accrue to the Greenland Self-Government authorities.

(2) The revenue referred to in subsection (1) shall include the following revenue:

1) Revenue in accordance with specific licenses for prospecting for, exploration for, or the exploitation of mineral resources. This shall not, however, include amounts paid to cover expenditure under the auspices of the Bureau of Minerals and Petroleum.

2) Revenue from any taxation in Denmark and Greenland of licence holders with respect to the part of the business that relates to mineral resources in Greenland.

3) Revenue from Greenland and Danish public authorities' stakes in companies, etc. that operate in the mineral resource area in Greenland.

4) Revenue from withholding tax, etc. in Denmark and Greenland concerning shareholders in companies that are licence holders, or in companies that entirely own such companies directly or indirectly and can receive tax-free dividend from these.

8. (1) If revenue from mineral resource activities in Greenland accrues to the Greenland Self-Government authorities, cf. section 7, the Government's subsidy to the Self-Government authorities shall be reduced by an amount corresponding to half the revenue which, in the year concerned, exceeds DKK 75 million.

(2) With effect from 1 January the year after the commencement of the Act, the amount of DKK 75 million referred to in subsection (1) shall be adjusted annually in accordance with the increase in the general price and wage index of the Finance and Appropriation Act for the year concerned.

(3) Calculation pursuant to subsection (1) shall take place the subsequent year with a view to payment the following year.

9. (1) With the assumption of the mineral resource area by the Greenland Self-Government authorities, the Government shall, against payment, ensure the provision of consultancy and other attendance to tasks for the purpose of the Self-Government authorities' attendance to the mineral resource area.

(2) With effect from the Greenland Self-Government authorities' assumption of the mineral resource area, Naalakkersuisut and the Government shall conclude an agreement on the services referred to in subsection (1).

(3) Naalakkersuisut may decide to renew the agreement referred to in subsection (2) in the form of multi-year agreements.

(4) Where agreements are concluded pursuant to subsection (2) and subsection (3), the Government shall, free of charge, provide Naalakkersuisut with research of special relevance to mineral resource exploration in Greenland.

10. If the Government's subsidy to the Greenland Self-Government authorities is reduced to zero kroner, cf. section 8, negotiations shall be initiated between Naalakkersuisut and the Government regarding the future economic relations between the Greenland Self-Government authorities and the Government. The negotiations shall include the distribution of revenue from mineral resource activities in Greenland, resumption of the Government's subsidy to the Greenland Self-Government authorities, and continuation of an agreement regarding the services referred to in section 9.

CHAPTER 4

FOREIGN AFFAIRS

11. (1) Naalakkersuisut may act in international affairs as laid down in this Chapter and in agreements with the Government.

(2) The Government and Naalakkersuisut shall cooperate in international affairs as laid down in this Chapter with a view to safeguarding the interests of Greenland as well as the general interests of the Kingdom of Denmark.

(3) The powers granted to Naalakkersuisut in this Chapter shall not limit the Danish authorities' constitutional responsibility and powers in international affairs, as foreign and security policy matters are affairs of the Realm.

12. (1) Naalakkersuisut may, on behalf of the Realm, negotiate and conclude agreements under international law with foreign states and international organisations, including administrative agreements which exclusively concern Greenland and entirely relate to fields of responsibility taken over.

(2) Agreements under international law which exclusively concern Greenland and the Faroe Islands and entirely relate to fields of responsibility taken over may, subject to decision by Naalakkersuisut as well as the Faroe Islands Landsstyre [Government of the Faroes], be negotiated and concluded jointly on behalf of the Realm by Naalakkersuisut and the Faroe Islands Landsstyre.

(3) Agreements under international law concluded pursuant to subsection (1) or subsection (2) may be terminated according to the same provisions.

(4) Agreements under international law affecting the defence and security policy as well as agreements under international law which are to apply to Denmark, or which are negotiated within an international organisation of which the Kingdom of Denmark is a member shall be negotiated and concluded according to the rules laid down in section 13.

(5) Naalakkersuisut shall inform the Government of negotiations under consideration before these are initiated and of the development of the negotiations before agreements under international law are concluded or terminated. A more detailed framework for the cooperation in accordance with this provision shall be determined after negotiation between Naalakkersuisut and the Government.

(6) Agreements under international law pursuant to subsection (1) shall be concluded on behalf of the Realm by Naalakkersuisut under the designation of:

a) The Kingdom of Denmark in respect of Greenland where the agreement appears as concluded between states.

b) Naalakkersuisut where the agreement appears as concluded between governments or between administrative authorities. In that case, reference shall be made in the preamble of the agreement to the present Act as specified pursuant to subsection (8).

(7) Agreements under international law pursuant to subsection (2) shall be concluded jointly on behalf of the Realm by Naalakkersuisut and the Faroe Islands Landsstyre under the designation of the Kingdom of Denmark in respect of the Faroe Islands and Greenland.
(8) More detailed rules for the use of designations referred to in subsections (6) and (7) as well as other similar designations may be determined in accordance with subsection (5).

13. (1) The Government shall inform Naalakkersuisut before negotiations are initiated regarding agreements under international law which are of particular importance to Greenland. Subject to request by Naalakkersuisut, an agreement may be concluded with the Minister concerned who shall lay down detailed cooperation rules within the framework of this provision, including a detailed determination of criteria for when agreements shall be deemed to be of particular importance to Greenland.

(2) In matters which exclusively concern Greenland, the Government may authorise Naalakkersuisut to conduct the negotiations, with the cooperation of the Foreign Service.

(3) Agreements where Denmark and Greenland have been jointly involved in the negotiations shall be signed by the Government, to the widest extent possible, together with Naalakkersuisut.

(4) Agreements under international law which are of particular importance to Greenland must, before they are concluded or terminated, be submitted to Naalakkersuisut for comments. If the Government deems it necessary to conclude the agreement without the consent of Naalakkersuisut, this shall, to the widest extent possible, have no effect for Greenland.

14. Where international organisations allow entities other than states and associations of states to attain membership in their own name, the Government may, subject to request by Naalakkersuisut, decide to submit or support such an application from Greenland where this is consistent with the constitutional status of Greenland.

15. As requested by Naalakkersuisut, representatives of Naalakkersuisut shall be appointed to the diplomatic missions of the Kingdom of Denmark to attend to Greenland interests within fields of responsibility that have been entirely assumed by the Self-Government authorities. The Government may determine that expenditure to this end shall be borne by Naalakkersuisut.

16. (1) Greenland Self-Government authorities shall be subject to the obligations that arise out of agreements under international law and other international rules which are at any time binding on the Realm.

(2) Measures under consideration by the Self-Government authorities which would be of substantial importance for the foreign relations of the Realm, including participation by the Realm in international cooperation, shall be negotiated with the Government before any decision is taken.

CHAPTER 5

COOPERATION BETWEEN THE GREENLAND SELF-GOVERNMENT AUTHORITIES AND THE CENTRAL AUTHORITIES OF THE REALM REGARDING STATUTES AND ADMINISTRATIVE ORDERS

17. (1) The Government's Bills which comprise or may be brought into force for Greenland must, before they are presented to the Folketing, be submitted to the Greenland Self-Government authorities for comments.

(2) The Government shall await the Self-Government authorities' comments before presenting Government Bills to the Folketing which contain provisions that exclusively apply to Greenland or are of particular importance to Greenland.

(3) A time limit may be fixed for the submission of comments comprised by subsection (2).

18. (1) Draft administrative orders which comprise or may be brought into force for Greenland must, before they are issued, be submitted to the Greenland Self-Government authorities for comments.

(2) The issue of administrative orders which contain provisions that exclusively apply to Greenland or are of particular importance to Greenland shall await the Self-Government authorities' comments.

(3) A time limit may be fixed for the submission of comments comprised by subsection (2).

CHAPTER 6

DISPUTE RESOLUTION

19. (1) Should any question of doubt arise between the Greenland Self-Government authorities and the central authorities of the Realm concerning the Self-Government authorities' responsibility in relation to the central authorities, the Government or Naalakkersuisut may decide to lay the question before a board consisting of two members nominated by the Danish Government, two members nominated by Naalakkersuisut, and three judges of the Supreme Court nominated by its President, one of whom shall be nominated as chairman.

(2) If the four members nominated by the Government and Naalakkersuisut reach agreement, the question shall be considered settled. If these four fail to reach agreement, the question shall be decided by the three Supreme Court judges.

(3) The board may decide to suspend the enactment or decision which has been placed before the board until such time as the board's decision is taken.

CHAPTER 7

LANGUAGE

20. Greenlandic shall be the official language in Greenland.

CHAPTER 8

GREENLAND'S ACCESS TO INDEPENDENCE

21. (1) Decision regarding Greenland's independence shall be taken by the people of Greenland.

(2) If decision is taken pursuant to subsection (1), negotiations shall commence between the Government and Naalakkersuisut with a view to the introduction of independence for Greenland.

(3) An agreement between Naalakkersuisut and the Government regarding the introduction of independence for Greenland shall be concluded with the consent of Inatsisartut and shall be endorsed by a referendum in Greenland. The agreement shall, furthermore, be concluded with the consent of the Folketing.

(4) Independence for Greenland shall imply that Greenland assumes sovereignty over the Greenland territory.

CHAPTER 9

ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS

22. The Act shall enter into force on 21 June 2009.

23. (1) Act No. 577 of 29 November 1978 on Greenland Home Rule shall be repealed, but see subsection (2).

(2) Section 8 of the Greenland Home Rule Act shall remain in force until the mineral resource area is taken over by the Greenland Self-Government authorities.

(3) The Greenland Self-Government authorities shall continue to exercise legislative and executive power in fields of responsibility that have been assumed pursuant to section 4 of the Greenland Home Rule Act.

(4) The Greenland Self-Government authorities shall exercise legislative and executive power in fields of responsibility that have been assumed pursuant to section 5 of the Greenland Home Rule Act.

24. (1) Act No. 577 of 24 June 2005 on the conclusion of agreements under international law by the Government of Greenland shall be repealed.

(2) Orders issued in pursuance of the Act shall remain in force with the amendments that arise out of this Act until they are amended or repealed by the proper authority.

25. Section 22 of the Act on Mineral Resources in Greenland, cf. Consolidation Act No. 368 of 18 June 1998 shall be repealed.

26. Act on the establishment of a company to attend to hydrocarbon activities in Greenland, etc., cf. Consolidation Act No. 87 of 9 February 1999 shall be repealed.

27. Act No. 502 of 6 June 2007 on subsidy to the Greenland Home Rule in 2008 and 2009 shall be repealed.

28. Provisions that apply to Greenland shall remain in force with the amendments that arise out of this Act until they are amended or repealed by the proper authority.

29. (1) Matters which at the time of transfer of a field of jurisdiction to the Greenland Self-Government authorities are under consideration by a Danish authority shall be finalised by the Greenland authority concerned, but see subsection (2)

(2) The Danish authority concerned may in special cases and subject to agreement with the Greenland authority concerned decide that certain specific matters shall be finalised by the Danish authorities.

SCHEDULE

List I

a) Industrial injury compensation

b) The remaining areas under the health care area

c) The road traffic area

d) The law of property and obligations

e) The commercial diving area

List II

1) Prison and probation service

2) Passports

3) Police and prosecution service as well as related parts of the administration of criminal justice

4) Administration of justice, including the establishment of courts of law

5) Criminal law

6) The aliens area and border controls

7) Law of capacity

8) Family law

9) Succession law

10) Law practice

11) The weapons area

12) Radio-based maritime emergency and security services

13) The radio communications area

14) The company, accounting and auditing area

15) The food and veterinary area

16) Aviation

17) Intellectual property

18) Copyright

19) Shipwreck, wreckage and degradation of depth

20) Security at sea

21) Ship registration and maritime matters

22) Charting

23) The buoyage, lighthouse and pilotage area

24) Marine environment

25) Financial regulation and supervision

26) The mineral resource area

27) The working environment

28) Meteorology